IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

FAO.No. 67 of 2007()

AGAINST THE ORDER DATED 20/12/2006 IN IA 191/2006 IN OS.724/1999 of PRINCIPAL SUB JUDGE, ERNAKULAM
.....

APPELLANT/PETITIONER/DEFENDANT:

A.V. VARGHESE, AGED 84 YEARS,
PROPRIETOR, MAJESTIC ENTERPRISES,
OPPOSITE PADMA THEATRE, M.G. ROAD,
ERNAKULAM.

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT/RESPONDENT: PLAINTIFF:

ASSOCIATED ELECTRICALS, POTTIPATTI
PLAZA, 35, NUMGAMBAKKAM, HIGH ROAD,
CHENNAI-34, REPRESENTED BY POWER OF ATTORNEY
HOLDER, P.K. ASOKAN, RESIDING AT
PARINGATTI PADINJAREVELI, PATTENAKKAD,
CHERTHALA.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 732 OF 2007
IN
F.A.O. NO.67 OF 2007

DISMISSED

26/7/07 **SD/- J.B.KOSHY, JUDGE.**

SD/- M.N. KRISHNAN, JUDGE.

[True Copy]

P.A. TO JUDGE.

J.B. KOSHY & M.N. KRISHNAN, JJ.

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F.A.O. NO. 67 OF 2007

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Dated this the 26th day of July, 2007.

J U D G M E N T

Krishnan,J.

This appeal is preferred against the order of the Principal Sub Judge, Ernakulam in I.A.191 and 192 of 2006 in OS.724/99. In a suit for money a decree was passed after setting the defendant exparte. The defendant with a petition to condone the delay of 1862 days filed applications to set aside the exparte decree on the ground of non-service of summons as well as medical grounds. The Court below did not find in his favour and dismissed the applications. It is against that decision the present first appeal is filed.

2. A perusal of the order would reveal that the defendant is a proprietor of Majestic Enterprises and according to him he was not attending the concern after 1.6.00 on account of the amputation of his leg. The suit was decreed exparte on 31.10.00 and he came to know

about it only when he received notice in the execution petition in 2005. One cannot disbelieve the version that he was unable to attend the concern for quite a long time on account of the amputation of the leg. It is submitted by him, on account of his ailment there was difficulty for him and he had never refused to receive the summons. The Court below did not hold in his favour for the reason that he did not examine the process server who had affixed the notice on his premises. Considering the medical disability of the person there is some force in his contention that he was not in a position to attend the concern and that he was unaware of the proceedings. The broad principles of natural justice demand that as far as possible cases should be disposed of only after hearing both the parties and the opportunity can be denied only when there is grave mis-conduct or gross negligence. Considering the medical back ground including the case of amputation of the leg, we find that one cannot

attribute grave mis-conduct or gross negligence on the part of the petitioner. Still there are laches on his part and we feel this can be cured by ordering a substantial amount as costs.

In the result, the F.A.O. is allowed and the exparte decree passed against the defendant is set aside on condition that he pays an amount of Rs.10,000/- as costs to the plaintiff in the case within a period of one month from today failing which the F.A.O. shall stand dismissed. If the amount is paid in time the Court below is directed to restore the suit to file, permit the defendant to file written statement and thereafter dispose it of in accordance with law.

J.B. KOSHY, JUDGE.

M.N. KRISHNAN, JUDGE.

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